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SUBJECT: AUSTRALIAN REGULATOR SAYS TELSTRA DOMINANCE OF  
TELECOMMUNICATION MARKET LIKELY TO CONTINUE

11. (SBU) SUMMARY: The Australian Competition and Consumer Commission (ACCC), the Australian government's anti-trust regulator, believes that the telecommunications giant Telstra is even better positioned to increase its market dominance following the final government share sell off (known as T3). While the ACCC has extended a series of challenges to Telstra's market dominance, the GOA's refusal to split the company will make it more difficult to prove any cross-subsidization within Telstra. As a result, while competition from cellular telephone companies remains a possibility in the voice market, potential competitors will hesitate to go head-to-head with Telstra in the critical data transmission market, where it may well be able to get away with cross-subsidization of a new fiber optic network through an opaque accounting of costs. If Telstra does capture the growing demand in the data market, it will succeed in undermining competition and securing its own dominance in telecommunications. In that case, we can expect Australia's competition regulator will continue to challenge Telstra in court but it and U.S. firms that wish to compete in Australia's telecommunication market will continue to face an uphill battle.  
END SUMMARY.

12. (SBU) Joe Dimasi, Executive General Manager of the Australian Competition and Consumer Commission (ACCC) met with Economics Counselor Matt Matthews and Melbourne pol/econoff Maya Dietz on March 5. Dimasi said that not only did Telstra remain a dominant player in the telecommunications market post T3, it likely would become even more so in the future. Although the Howard government made no changes favorable to Telstra in the privatization process, according to Dimasi, the Government's failure to split the company and create only weak separation of operations left Telstra well positioned to exploit cross-subsidization opportunities in future ventures.

13. (SBU) "If the story was voice, Telstra dominance could be threatened by mobiles," Dimasi said. "But the story is data transmission, which is where all the new money is coming from." Cellular telephone companies, or mobiles, as Australians call them, have increased capacity to carry data, "but wireless can only take you so far before congestion becomes a real issue," he said. At the moment, this really meant looking at fixed line networks. The two fixed lines options, as he sees them, are to use the existing copper network (which Telstra controls), or invest in fiber lines. "You are not going to get competition with fiber," Dimasi said.

14. (SBU) Telstra's initial proposal to the ACCC to increase the speed of its current copper network was rejected by the regulating body because of the high price Telstra wanted to charge competitors to use the network. According to Dimasi, Telstra is using the press to convince users that the ACCC has tried to force the company to

price below cost, and that it is the ACCC that has prevented the networks from reaching the rural areas. Both are lies, according to Dimasi. By law, the ACCC cannot require a company to price below cost. Second, Dimasi believes Telstra never had any intention of networking rural areas, because it was not commercially viable.

15. (SBU) A consortium of nine smaller telecommunications companies (led by Optus and comprised also of AAPT, Internode, iiNet, Primus, Macquarie Telecom, Powertel, Soul and TransACT), known as the G9, also has put forth a proposal that would allow for open access to the network. An important distinguishing element of G9's plan is that whoever owns the network will not have a retail arm, and therefore would focus on access seekers rather than access providers. Although a seemingly good alternative to a Telstra monopoly, it is not yet clear whether the consortium can "pluck up the courage" to challenge Telstra, Dimasi said. "Telstra has enough money to roll out its own [fiber] network...and the market cannot afford two." If the G9 fails to raise the financing, or simply backs down under Telstra pressure, it would entrench the dominance of Telstra's position, he affirmed.

16. (SBU) Telstra has lost all of its challenges of ACCC rulings before the Australian Competition Tribunal, according to Dimasi, including its claim that the ACCC was unfairly forcing the company to lower its price for line access. Dimasi also thinks that Telstra will lose a case it has pending before the High Court, in which the company alleges that its property has been taken without due compensation, referring to the fact that it cannot price as it wants for competitors to use its lines. Telstra is making "a last ditch effort before the elections", Dimasi said, to strike fear into its competitors and win concessions from the government. In the end, Dimasi thinks that ACCC will spend its time dealing with concerns about cross-subsidization, and term and conditions of access by other providers to Telstra's network. "There are long, hard battles in the courts ahead", he concluded.

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17. (SBU) COMMENT: Splitting Telstra's infrastructure and product divisions would have made the transition to fiber networks more rational and easier to regulate. However, this was politically untenable at the time, likely because the government wanted to maintain the company's share price before the sell-off. As the benefits to making the switch to a fiber network are substantial, especially in a country with Australia's geographic peculiarities, it will likely go forward, with Telstra in the driver's seat. How opaque the operating environment will be for other telecommunication companies, and how much profit Telstra garners from the transition, remains to be worked out in the courts. END COMMENT.

18. (U) This message was cleared with Embassy Canberra.

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